

F. M. S.

[ORIGINAL CIVIL JURISDICTION]

ELPHINSTONE, C.J.

January 17, 1930.

RE: CHOP THOW CHIANG**EX PARTE: WILLIAM JACKS & COMPANY
(MALAYA), LIMITED.**

[SELANGOR BANKRUPTCY No. 69 of 1929]

*Committal order—Bankruptcy Enactment
1912, Section 107.*

The public examination of the debtor was held on the 17th January, 1930, and at the close of the examination the Official Assignee asked the Court to order the bankrupt to undergo imprisonment under Section 107 (c) of the Bankruptcy Enactment.

Debtor in person.

Raja Musa, Official Assignee.

P. B. Ford for a Creditor.

Held (Elphinstone, C.J.), that the Court will not make an order under Section 107 of the Bankruptcy Enactment except upon notice of motion served on the debtor and specifying the offence which the debtor is alleged to have committed and that the debtor must be supplied with a copy of the notes of the public examination.

[ORIGINAL CIVIL JURISDICTION]

ELPHINSTONE, C.J.

May 7, 1930.

[SELANGOR CIVIL SUIT No. 489 of 1929]

S. CHELLATAMBY..... Plaintiff**vs.****C. A. VELUPPILLAY..... Defendant***Evidence Ordinance Section 92—Admissibility of evidence of an oral agreement.*

In considering the provisions of proviso 2 to Section 92 of the Evidence Ordinance, the Court must have regard to the degree of formality of the written document. When one of the parties to a suit has signed in the presence of witnesses, a written document which contains the terms of settlement of the suit, and judgment has been entered accordingly, evidence is not admissible of any separate oral agreement for the purpose of contradicting, varying or adding to or subtracting from the terms set forth in the written document.

The facts appear sufficiently from the judgment of Elphinstone, C.J.

J. G. Campbell and M. Morrison for Plaintiff,

V. D. Knowles, H. D. Mundell and B. J. P. Joaquim for Defendant.

ELPHINSTONE, C.J.—The plaintiff, Chellathamby, in this suit seeks to enforce against the

defendant, Veluppillay, an alleged verbal agreement made contemporaneously with and adding certain terms to a written contract (which in the evidence has been called the "Heads of Agreement") for the compromise of Civil Suit No. 235 of 1926 brought by Veluppillay to eject Chellathamby from No. 5, Prince's Road, Kuala Lumpur and for arrears of rent.

By his statement of defence (page 3 of Exhibit 13) in Civil Suit No. 235 of 1926 Chellathamby, the plaintiff in the present suit, alleged that in January, 1924 in consideration of \$126,000 paid by Veluppillay on behalf of Chellathamby to the latter's chargees, No. 5, Prince's Road and twenty other pieces of land in Kuala Lumpur had been transferred by Chellathamby to Veluppillay upon trust that Chellathamby and Veluppillay should jointly sell the land at a time when the market price should improve and credit Veluppillay with the \$126,000 minus any rent recovered by him for the land, and that the balance of the proceeds of sale should be appropriated by Chellathamby, and that till the sale Chellathamby should be allowed to occupy No. 5, Prince's Road rent free. Chellathamby also denied having ever paid rent for No. 5, Prince's Road.

By the Heads of Agreement (page 12 of Exhibit 13) dated the 18th December, 1926 Chellathamby withdrew the allegation in his statement of defence of a trust and that he had never paid rent for No. 5, Prince's Road, and consented to judgment for \$770 for rent and for an immediate order for ejectment and for costs. Chellathamby also agreed to pay a monthly rent of \$30 for No. 5, Prince's Road.

By clause 5, Veluppillay, without putting himself under a binding obligation, stated that he would not execute his judgment for ejectment until the 31st March, 1927 subject to certain conditions.

On the 22nd October, 1926, Civil Suit No. 235 of 1926 came on for hearing. Chellathamby did not appear. Counsel for Veluppillay proved Chellathamby's signature to the Heads of Agreement by the evidence of an attesting witness whereupon judgment was given for Veluppillay for \$770 and costs, and for an immediate order for ejectment. This judgment was embodied in a formal decree dated the 22nd October, 1926 (page 9 of Exhibit 13). But the decree does not refer to the Heads of Agreement, nor was the latter made an order of Court.

By an order of Court dated the 13th February, 1928, it was ordered that the decree in Civil Suit 235 of 1926 be executed and on the 4th April, 1928 Chellathamby was ejected from No. 5, Prince's Road. Chellathamby had paid no part of the \$770 or of the costs of Civil Suit 235 of 1926.

On the 4th October, 1929 Chellathamby filed his plaint in the present suit. The plaint set out